Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

No. 80-204

RYDER TRUCK LINES, INC., Petitioner

v.

HARRIS FARMER, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF GEORGIA

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August 1, 1980.

QUESTIONS PRESENTED

1. Whether the arbitrary assignment of workers' compensation liability to the regulated common carrier violates the equal protection clause of the Fourteenth Amendment.

2. Whether the state court's assessment of liability to the regulated carrier constitutes an invalid interference with the flow of interstate commerce.

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The petitioner Ryder Truck Lines respectfully prays that a writ of certiorari be issued to review this judgment and opinion of the Georgia Supreme Court entered in this proceeding on April 22, 1980.

OPINION BELOW

The opinion of the Supreme Court of the State of Georgia, 245 Ga. Reports 734, appears in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on April 22, 1980. A timely petition for rehearing was denied on May 7, 1980 (the petition for rehearing and the denial thereof appear in the Appendix hereto), and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

QUESTIONS PRESENTED

1. Whether the arbitrary assignment of workers' compensation liability to the regulated common carrier violates the equal protection clause of the Fourteenth Amendment.

2. Whether the state court's assessment of liability to the regulated carrier constitutes an invalid interference with the flow of interstate commerce.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 49:
Section 303(b)(6) Definitions and exceptions–
Definitions, Vehicles excepted from operation of law
(Copy of 303(b)(6) included in Appendix)
Code of Federal Regulations, Title 49:
Section 1057.2 Definitions
(Copy of 1057.2 included in Appendix)
Section 1057.4 Augmenting Equipment
(Copy of 1057.4 included in Appendix)
Georgia Workers' Compensation Act,
Georgia Code Annotated, Title 114:
Section 101 "Employer" and "Employee" defined
(Copy of Title 114-101 included in Appendix).

STATEMENT OF THE CASE

Harris Farmer, the respondent herein, was injured on November 8, 1977 in Gordon County, Georgia while driving a tractor trailer owned by Dan Martin Trucking Company. At the time of the accident, Martin had four trucks, and four drivers, all of which were permanently leased to Hames Trucking Company out of Jonesboro, Georgia (R. 261,262,263). Under the terms of the lease to Hames Trucking Company, each tractor has an individual, continuing lease whereby Dan Martin actually retains possession of the vehicle and furnishes the driver to Hames Trucking Company (R. 271,285,286,287). Hames deducts 17% of the revenue produced by each trip and then pays Martin the remaining 83%. Out of his 83%, then Martin pays the respondent 25% directly (R. 270,271,279). Martin's contract with Hames Trucking Company allows him to secure a return load with any other trucking company or shipper that he can locate in order that he not have to return to the state with an empty trailer (R. 272).

When the driver has reached the end of the outbound trip, he is authorized by Martin to find another return load, to which end he then signs a "one-way trip lease" to haul cargo back into Georgia (R. 273). While Hames Trucking Company is an "exempt" or "non-regulated" carrier (under the provisions of 49 U.S.C. section 303(b)(6) solely based upon its cargo), Ryder Truck Lines, as a regulated carrier, prior to signing a lease with the driver, must inspect the truck and satisfy itself as to the driver's qualifications. This is consistent with Ryder's statutory responsibility to insure that the drivers comply with the Interstate Commerce Commission Regulations (R. 319). Removable Ryder placards would then be placed over the permanent Hames' markings on the doors of the tractor (R. 292). When the driver arrives back in Georgia and unloads his cargo, he breaks the lease. Ryder receives 27% of the revenue produced by the trip, the remaining 73%, out of which the respondent is paid, is paid by Ryder to Dan Martin (R. 281,282). Martin, the private carrier, acknowledged that he was, at all times, responsible for

maintenance of the vehicles, both at home and on the road. Martin and his drivers pull maintenance and Martin supplies the parts (R. 302,303). In addition, Martin acknowledged that he supervises maintenance (R. 303) and is also responsible for the purchase of gas and oil (R. 283,293,294), as well as for traffic citations, fines and damages to the cargo (R. 280,281). Martin is directly responsible for paying the drivers (R. 268,269,270,290). Martin owns the trucks and the ultimate responsibility for hiring and firing drivers is with him (R. 279,297,326,332,333). Martin disciplines the drivers himself if they are not driving correctly: he admitted the only action that Ryder or Hames could take was to refuse to load the truck, and neither could take Martin's driver off the truck and replace him with one of their own (R. 303,304-307).

The respondent testified that he was hired by Dan Martin and was paid directly by Martin by check, receiving 25% of the revenues produced from each run (R. 97,99). The representative from Ryder stated that the one-way trip lease was regulated under the Interstate Commerce Act, which allows the carrier to augment equipment. Where, as here, the truck has just hauled a load of freight, exempt from ICC Regulations, Ryder can, as a regulated carrier, load regulated freight on it so long as it is hauled back in the direction of the home base of the truck. The purpose is to avoid empty back hauls (R. 167,168). This is, however, an "equipment lease" and Ryder does not take physical possession of the truck (R. 173).

On this particular trip, the respondent left for Chicago with a load of poultry under Hames' markings. When he reached Chicago and unloaded, he called Ryder Truck Lines and signed a one-way trip lease for cargo to return to Atlanta. He presented his credentials, and Ryder inspected the vehicle (R. 110,111, 112). Farmer, the respondent, was given the choice of cargo, and he chose the route he would take to return to Atlanta. While he was required by ICC regulations to place temporary Ryder placards on the tractor, Ryder did not tell him how to operate his truck other than to give him a destination and a time of arrival (R. 114,116,117). During the return trip from

Chicago to Atlanta an accident occurred, which was the subject of all proceedings conducted thus far in the matter.

FEDERAL QUESTION

Following an adverse ruling by the Administrative Law Judge, the Georgia State Board of Workers' Compensation on October 20, 1978, entered an Award denying the claim of the respondent against both Hames Trucking Company and Ryder Truck Lines on the grounds that under applicable common law tests, Farmer was not the employee of either. Upon appeal, the Award was affirmed by the Superior Court of Gordon County on January 24, 1979. The case was then appealed to the Court of Appeals of the State of Georgia, which in a Full Bench Decision, dated November 30, 1979, (a copy of which appears in the Appendix hereto), upheld the finding below that the respondent was not an employee of either Hames Trucking Company or Ryder Truck Lines. Upon timely application, the Supreme Court of Georgia granted certiorari stating specifically:

> "The Court is particularly concerned with the following: The applicability to this case of the 'statutory employer' provision (Code Ann. section 114-112) in light of *Holt v. Travelers Insurance Company*, decided 12-05-79." (The notice from the Georgia Supreme Court granting certiorari is attached to the Appendix.)

Neither Georgia Code Annotated section 114-112, nor the *Holt* case were concerned with the effect of the ICC Regulations upon the issue of employment. Ga. Code Ann. section 114-112 states in part:

> "Every claim for compensation under this Section shall be in the first instance presented to and instituted against the immediate employer, but such proceedings shall not constitute a waiver of the employee's right to recover compensation under this Title from the principle or intermediate

contractor."

In its surprising opinion, the Georgia Supreme Court, in fact, changed the style of the case, separated the defendants, and reversed the decision of the State Board of Workers' Compensation and the Courts below as those applied to Ryder alone. Basing its opinion not upon the issue for which certiorari had initially been granted, but rather upon the effect of the ICC Regulations upon the regulated, or non-exempt carrier, the Court held the respondent to be a "statutory employee" of Ryder Truck Lines. The petitioner, in its Motion for Rehearing, set forth its right to equal protection under the Fourteenth Amendment of the United States Constitution. That Motion was denied.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE SUPREME COURT OF GEORGIA CONSTITUTES STATE ACTION IN VIOLATION OF THE PETITIONER'S FOURTEENTH AMENDMENT RIGHTS TO EQUAL PROTECTION OF THE LAWS.

The petitioner in this action is a common carrier involved in interstate and intrastate commerce. As such, it is subject to the Interstate Commerce Act and its accompanying regulations. Hames Trucking Company, originally a co-defendant, is also engaged in interstate and intrastate transportation of goods, but it is "exempt" from the effect of these regulations simply because of the type of cargo it transports.

Here the petitioner, a regulated carrier, entered into an equipment lease with the Dan Martin Trucking Company, a "private carrier", in which the driver was furnished by the latter. Said driver, Farmer, was injured while fulfilling Martin's obligations under the lease. The Georgia Supreme Court overruled the State Board of Workers' Compensation and the lower appellate courts of the State, suspended the prior common law

method of determining an employer/employee relationship, and attached liability to the regulated carrier solely by virtue of its being subject to the controls imposed by the ICC Regulations. This decision should fall not only because it denies the equal protection of the laws to the regulated carrier, but also because it is fundamentally incorrect.

The Fourteenth Amendment to the Constitution of the United States states that, "No State shall make or enforce any law which . . . shall deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction equal protection of the laws." U. S. Const. Amend. XIV, section 1. Corporations are persons within the meaning of this Amendment. *Liggett Co. v. Lee*, 288 U.S. 517; *Grosjean v. American Press Co. Inc.*, 297 U.S. 233. Naturally, most cases of this type are seen to involve a challenge to a state statute setting up a classification. Nevertheless, the prohibition of the Fourteenth Amendment applies to, and may be violated by, state action of every kind, including judicial action. *Shelley v. Kraemer*, 334 U.S. 1.; *Central Kentucky Natural Gas Company v. Railway Commission of Kentucky*, 37 F.2d 938 (E.D. Ky.).

In the case of *Chicago, M. & St. P. Ry. Co. v. Westby*, 178 F. 619, a statute enlarging the common law liability of common carriers for injury to their employees was held void as a denial of the equal protection of the laws by reason of its being restricted in its scope to common carriers. The court in that case stated:

> "In the face of the constitutional prohibition of unequal laws, there are three indispensable conditions to a constitutional imposition of liabilities or burdens upon, or a constitutional grant of rights or privileges to, the members of one class that other members of the state do not bear or enjoy: (1) There must be such a difference between the situation and the circumstances of all the members of the class and the situation and circumstances of other members of the state in relation to the subjects of the discriminatory legislation as presents a just and natural reason of necessity or propriety for the difference made by the law

in their liabilities and rights. While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification . . . (2) No person who does not belong to the class may be included therein, and all persons with the influence of the legislation relative to the class must be treated alike thereby. (3) All who are in a situation and circumstances relative to the subject of the discriminatory legislation indistinguishable from the situation and circumstances of the members of the class must be brought under the influence of the legislation and treated by it in the same way as other members of the class." *Chicago M. & St. P. Ry. Co. v. Westby, supra* at 624, 625.

If any of these conditions are disregarded, parties within or without the class are deprived of the equal protection of the laws. In relation to the subject matter of this action, i.e. the existence of an employer/employee relationship, there is no reason of necessity or propriety to separate the regulated common carriers from private carriers. There is even less reason to discriminate against the regulated carrier, as against a non-regulated common carrier such as Hames Trucking Company which is exempt solely because it was transporting poultry rather than frozen pies. The Georgia Supreme Court decision makes the regulated common carrier a "statutory employer" while simultaneously applying common law principles to the non-regulated carrier and the private carrier. We do not contend the court should ignore the existence of the ICC Regulations which apply to the regulated carriers, but simply argue that the court should apply the common law principles of determining employer/employee relationships to all truckers within the State, taking into consideration the ICC Regulations

only as they were meant to apply. Equal protection of the laws means exemption from any greater burden and charges than are equally imposed upon all others under like circumstances.

Aside from the unequal situation within the State of Georgia, the decision in question emphasizes the more important problem which exists on a recurring basis in interstate commerce. By this decision, the regulated carriers operating within the State must accept liability for compensable injuries to each individual driver involved in a "one-way trip lease". Ryder Truck Lines alone enters into approximately 4,295 such leases per month. It is established that the effect of this "augmentation of equipment" by regulated carriers is to allow the exempt and private carriers to continue to operate economically by the avoidance of "dead heading" or returning to the home base with an empty truck. For example, in the present case, Martin, the private carrier would spend almost two hundred dollars in fuel and maintenance costs to haul an empty trailer from Chicago to Atlanta. This does not include the salary of the driver or the time expended in profitless activity. In the long term, "dead heading" means "out of business". Whatever methods the regulated carriers adopt to protect themselves from the liability thus imposed by this decision will to some extent curtail this practice which will, in turn, adversely effect the entire trucking industry.

In addition, as noted in the second reason stated below, other states disagree with Georgia on this issue and there exists, therefore, no uniformity. This in itself is a barrier to the practice of augmentation of equipment, and any excess exposure or liability imposed by the states is detrimental to this beneficial practice. It is, however, not the imposition of liability by the state to which the petitioner takes exception, but the arbitrary and discriminatory manner in which it is done. There is no difference between the situation and circumstances of the regulated carriers upon whom the liability automatically falls and those of the remaining carriers operating within the State of Georgia relative to the workers' compensation issue involved.

Further, the correctness of the decision itself is open to

serious question in that even considering the controls implied by the ICC Regulations, the actual day to day control of a driver is not in the hands of the petitioner who only inspects the vehicle, ascertains the driver's qualifications, and exercises such limited control over the vehicle as to protect the interest of the shipping public. The respondent in this case is an absolute stranger to the petitioner. The petitioner did not hire him, did not pay his wages, does not discipline or supervise him and, more importantly, has no right to remove him from his position, even if he were to cause a violation of the ICC Regulations in question.

There is no sound reason of necessity or propriety for the difference of liabilities which this decision imposes upon the members of the class of carriers it forms and the other carriers in the state in same situation and circumstances. The ruling creates a situation where the driver/employee has three rotating employers at one time or another during the course of a single round trip. In no other instance does indicia for determining control and responsibility vary as frequently as the shifting label of employer in this case. There is no justification or consistency of reasoning in the categorization of employers. This decision denies to a great number of said common carriers the equal protection of the laws, violates the Fourteenth Amendment to the Federal Constitution and should be reviewed on certiorari.

2. THE GEORGIA COURT'S DECISION CREATES SIGNIFICANT BURDENS ON INTERSTATE COMMERCE

The Georgia Supreme Court's decision in this case is an example of the disunity and confusion in the area of workers' compensation law as it relates to interstate commercial trucker. State Courts' inconsistency in applying workers' compensation statutes to situations involving injuries which occur while a truck is leased for a single one-way trip by an interstate carrier from a private carrier has created a jumble of contradictory law and a severe burden on the flow of interstate commerce. The

decision of the Georgia Court holding the regulated carrier/ lessee liable for workers' compensation benefits is an unconstitutional interference with interstate commerce.

The varying state rulings on the issue of responsibility for workers' compensation have led to a situation which is disadvantageous for both the regulated carrier and the private carrier leasing his trucks for a single, one-way trip. Neither party can be certain of its responsibility for providing workers' compensation coverage for the driver due to confusion over which party is the employer within the meaning of each state workers' compensation statute. Liability for workers' compensation may be determined by the situs of the accident, the home of the injured employee, or the state where the contract was concluded between the parties. Unfortunately, the responsibility for this liability may differ in each location.

State Courts' approach to this problem has been to examine each case upon its particular facts without giving adequate concern for the financial burden attending responsibility for workers' compensation coverage and the inevitable consequences of these random determinations. Several states have ruled that the private carrier, Dan Martin Trucking Company in the present case, has primary control over the drivers and should assume responsibility for workers' compensation coverage. *Rantis v. Michicago Motor Express*, 333 Mich. 73, 52 N.W. 2d 602; *Eagen v. K. & A. Truck Lines, Inc.*, 254 Ia. 914, 119 N.W. 2d 805; *Wilds v. Morehouse*, 152 Neb. 749, 42 N.W. 2d 649; *Behner v. Industrial Commission*, 154 Ohio St. 433, 96 N.E. 2d 403. These decisions emphasize the control maintained by the private carrier over the driver; the right to fire, responsibility for payment of the driver, and the duty to maintain the truck in good working condition during the course of the trip.

In direct contradiction, a few states have held the regulated carrier liable for workers' compensation benefits. *McGill v. Bison Fast Freight*, 245 N.C. 469, 96 S.E. 2d 438; *Patton v. Patton*, 308 S.W. 2d 739 (Mo.). These decisions are grounded upon the regulated carrier's control mandated by 49 C.F.R. 1057.4, the Interstate Commerce Commission's provision for

augmenting equipment. This control includes approval of the driver, inspection of the equipment, and public identification of the truck as belonging to the regulated carrier by use of placards. Still another jurisdiction has held that both the regulated carrier and the private carrier are liable for the injured employee's compensation benefits. *Long v. Sims Motor Transport Lines*, 124 Ind. App. 504, 117 N.E. 2d 276; *Jackson Trucking Co., Inc. v. Interstate Motor Freight*, 122 Ind. App. 546, 104 N.E. 2d 575.

The result of these conflicting decisions has been to create confusion within the industry as to who assumes responsibility for the coverage of the driver. For example, on a trip from Nebraska to Michigan, the responsibility will shift with the crossing of each state line. This creates an intolerable burden on the flow of interstate commerce. Neither the regulated carrier nor the private carrier wants the burden of providing for workers' compensation coverage but both are forced to carry the coverage or assume the risk. The uncertainty is exacerbated when states reach far beyond their boundaries and force regulated carriers to assume the burden of providing benefits for injured truckers based on a nexus with the employee or contracting parties. *Patton v. Patton, supra.*

Workers' compensation coverage is a costly burden on the regulated carrier. The number of one-way trip leases between regulated carriers and private carriers is huge and the cost of providing temporary coverage may well outweigh the benefits regulated carriers derive from one-way trip leases. The cost involved in compliance with each state's unique interpretation of the employer/employee relationship and its application of its workers' compensation statute creates an unjustified burden on interstate commerce. *Bibb v. Navajo Freight Lines*, 359 U.S. 520, 526. *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429, 445.

If the lack of uniformity among the states continues it could result in regulated carriers routing trips in a less direct manner to avoid travelling through states in which they might incur liability for injured drivers. *Raymond Motor Transportation,*

Inc. v. Rice, supra at 445. The alternative is that the dissimilar regulations discourage the use of the one-way trip lease. This will have a financially disastrous effect on the private carriers who will be forced to haul empty trucks back to home bases following deliveries. Regulated carriers that continue to use one-way trip leases would favor drivers, private carriers, and contracts originating from states where the workers' compensation laws are most favorable. All of these possibilities demonstrate the potential seriousness of the burden on interstate commerce if the situation is allowed to continue on the present random course.

The efforts of the states in applying workers' compensation laws to regulated carriers leads to more problems than solutions. The states should be barred from the arbitrary choosing of which employer to make responsible for compensation coverage. This is an area in which congressional guidance is appropriate and state action is inappropriate and burdensome on commerce. Congress and the Interstate Commerce Commission implemented the Augmented Equipment Regulation, 49 C.F.R. 1057.4, to aid commercial truckers and discourage the expensive, wasteful practice of hauling empty trailers when there are available goods to be hauled. This regulation provides many private carriers with the margin of profit needed to remain in business. State interference through the unrestrained imposition of workers' compensation coverage interferes with Congress' goal in creating the Augmented Equipment Regulation. If unabated this interference could virtually terminate the usefulness of the Regulation by making it impractical and unprofitable for regulated carriers to take advantage of the provision and its purpose. Power to regulate commerce was given to the federal government "to make impossible the recurrence of the evils which had overwhelmed the Confederation, and to provide the necessary basis of national unity by insuring 'uniformity of regulation against conflicting and discriminating state legislation'." *Houston, East & West Texas Ry. Co. v. United States*, 234 U.S. 342, 350. The conditions and circumstances of travel and one-way trip leases are substantially

the same throughout the country. The states intervention into commerce by imposing their local workers' compensation laws on regulated interstate carriers creates an unnecessary and expensive burden on commerce.

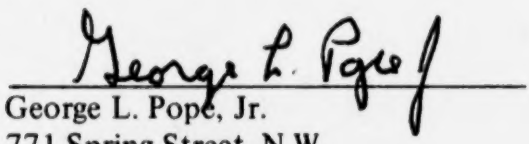
If state workers' compensation statutes are to be applied, there should be some regularity in defining "employer", "control", and in determining which state statute applies in which circumstances. The number of conflicting decisions and the potential disruptive impact on interstate commerce justify the grant of certiorari to review the judgment below.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Georgia State Supreme Court.

Respectfully submitted,

SWIFT, CURRIE, McGHEE & HIERS



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APPENDIX

United States Code, Title 49
Section 303(b)(6) Definitions and exceptions.

Vehicles excepted from operation of law

(b) Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation: *Provided,* That the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": *Provided further, however,* That notwithstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shell fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products); . . . .

Code of Federal Regulations, Title 49
Section 1057.2 Definitions

(a) *Authorized carrier.* A person or persons authorized to engage in the transportation of property as a common or contract carrier under the provisions of section 206, 207, or 209 of the Interstate Commerce Act, 49 U.S.C. 306, 307, or 309.

(b) *Equipment.* A motor vehicle, straight truck, tractor, semitrailer, full trailer, combination tractor-and-trailer, combination straight truck and full trailer, and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c) *Interchange of equipment.* The physical exchange of equipment between motor common carriers or the receipt by one such carrier of equipment from another such carrier, in furtherance of a through movement of traffic, at a point or points which such carriers are authorized to serve.

(d) *Regular employee.* A person not merely an agent but regularly in exclusive full-time employment.

(e) *Agent.* A person duly authorized to act for and on behalf of an authorized carrier.

(f) *Owner.* A person (1) to whom title to equipment has been issued, or (2) who as lessee has the right to exclusive use of equipment for a period longer than 30 days, or (3) who has lawful possession of equipment and has the same registered and licensed in any State or States or the District of Columbia in his or its name.

(g) *Private carrier.* A person as defined in section 203(a)(17) of the Interstate Commerce Act.

(h) *Shipper.* A person who consigns or receives property which is transported in interstate or foreign commerce.

Code of Federal Regulations, Title 49
Section 1057.4 Augmenting Equipment

Other than equipment exchanged between motor common carriers in interchange service as defined in section 1057.5, authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:

(a) *Contract requirements.* The contract, lease, or other arrangement for the use of such equipment:

(1) *Parties.* Shall be made between the authorized carrier and the owner of the equipment.

(2) *Written contract required.* Shall be in writing and signed by the parties thereto, or their regular employees or agents duly authorized to act for them in the execution of contracts, leases, or other arrangements.

(3) *Minimum duration of 30 days when operated by lessor.* Shall specify the period for which it applies, which shall be not less than 30 days when the equipment is to be operated for the authorized carrier by the owner or employee of the owner, excepting:

(i) *Equipment used in agricultural or perishable operations.* That subject to the proviso in (c) of this subdivision such 30-day minimum period shall not apply to equipment, with driver:

(a) Where the motor vehicle so to be used is that of a farmer or a cooperative association or a federation of cooperative associations, as specified in section 203(b)(4a) or (5) of the Interstate Commerce Act, or is that of a private carrier of property by motor vehicle as defined in section 203(a)(17) of the Act and is used regularly in the transportation of property of a character embraced within section 203(b)(6) of the Act or perishable products manufactured from perishable property of a character embraced within section 203(b)(6), and such motor vehicle is to be used by the motor carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based; or

(c) *Provided.* In either instance that prior to the execution of the lease, the authorized carrier receives and retains a statement signed by the owner of the equipment, or someone duly authorized to sign for the owner, authorizing the driver to lease the equipment for the movement or movements contemplated by the lease, certifying that the equipment so leased meets the qualifications enumerated in (a) or (b) of this subsection, and specifying the origin, destination, and the time of the beginning and ending of the last movement which brought the equipment within the purview of this subsection.

(4) *Exclusive possession and responsibilities.* Shall provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of said contract, lease or other arrangement, except:

(i) *Lessee may be considered as owner.* Provision may be made therein for considering the lessee as the owner for the purpose of subleasing under these rules to other authorized carriers during such duration.

(ii) *Household goods, carrier: intermittent operations under long-term lease.* When entered into by authorized carriers of household goods, for the transportation of household goods, as defined by the Commission, such provisions need only apply during the period the equipment is operated by or for the authorized carrier, lessee.

(5) *Compensation to be specified.* Shall specify the compensation to be paid by the lessee for the rental of the leased equipment . . . . The contract also shall specify, regardless of the method or manner in which compensation of the lessor is determined, the terms and conditions as to when payment of compensation is due and payable to the lessor and the circumstances, if any, when such compensation, in whole or in part, will be withheld.

(6) *Duration to be specific.* Shall specify the time and date or the circumstances on which the contract, lease, or other arrangement begins, and the time or the circumstances on which it ends. The duration of the contract, lease or other arrangement

shall coincide with the time for the giving of receipts for the equipment as required by paragraph (b) of this section; and

(7) *Copies of lease and their distribution; copy to be carried on vehicle.* Shall be executed in triplicate; the original shall be retained by the authorized carrier in whose service the equipment is to be operated, one copy shall be retained by the owner of the equipment, one copy shall be carried on the equipment specified therein during the entire period of the contract, lease, or other arrangement, unless a certificate as provided in paragraph (d)(2) of this section is carried in lieu thereof.

(b) *Receipts for equipment to be specific.* When possession of the equipment is taken by the authorized carrier or its regular employee or agent duly authorized to act for it, said carrier, employee or agent shall give to the owner of the equipment, or the owner's employee or agent a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is taken; and when the possession by the authorized carrier ends; it or its employee or agent shall obtain from the owner of the equipment, or its regular employee or agent duly authorized to act for it, a receipt specifically identifying the equipment and stating therein the date and the time of day possession thereof is taken.

(c) *Safety inspection of equipment by the authorized carrier.* It shall be the duty of the authorized carrier, before taking possession of the equipment, to inspect the same or to have the same inspected by a person who is competent and qualified to make such inspection and has been duly authorized by such carrier to make such inspection as a representative of the carrier in order to insure that the said equipment complies with the Motor Carrier Safety Regulations of the Federal Highway Administration of the Department of Transportation . . . .The person making the inspection shall certify the results thereof on a report in the form hereinafter set forth, which report shall be retained and preserved by the authorized carrier, and if his inspection discloses that the equipment does not comply with the requirements of the said safety regulations, possession thereof shall not be taken . . . . .

(d) *Identification of equipment as that of the authorized carrier.* The authorized carrier acquiring the use of equipment under this rule shall properly and correctly identify such equipment during the period of the lease, contract, or other arrangement in accordance with the Commission's requirements in Part 1058 of this chapter (Identification of Vehicles). If a removable device is used to identify the acquiring authorized carrier as the operating carrier, such device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the acquiring authorized carrier's own series so as to keep proper record of each of the identification devices in use.

(1) *Identification to be removed when lease terminated.* The authorized carrier operating equipment under this part shall remove any legend, showing it as the operating carrier, displayed on such equipment, and shall remove any removable device showing it as the operating carrier, before relinquishing possession of the equipment.

(e) *Driver of equipment to be in compliance with safety regulations.* Before any person other than a regular employee of the authorized carrier is assigned to drive equipment operated under this part, it shall be the duty of the authorized carrier to make certain that such driver is familiar with, and that his employment as a driver will not result in, violation of any provision of the Motor Carrier Safety Regulations of the Federal Highway Administration of the Department of Transportation.

(f) *Record of equipment to be maintained; shipping documents to identify the authorized carrier.* The authorized carrier utilizing equipment operated under this part for periods of less than 30 days shall prepare and keep a manifest or other documents covering each trip for which the equipment is used in its service, containing the name and address of the owner of such equipment; point of origin, the time and date of departure, the point of final destination, and the authorized carrier's serial number of any identification device affixed to the equipment. During the time that equipment subject to this part is operated

there shall be carried with the equipment, bills of lading, waybills, freight bills, manifests, or other papers identifying the lading, and containing the foregoing information, which shall clearly indicate that the transportation of the property carried is under the responsibility of the authorized carrier, which papers shall be preserved by the authorized carrier. This section shall also apply with respect to vehicles leased for periods of 30 days or more unless the required information is kept at a terminal or office as a part of the records of the authorized carrier.

Georgia Worker's Compensation Act, Georgia Code Annotated.

114-101 "Employer" and "employee" defined

"Employer" shall include the State of Georgia and all departments, instrumentalities and Authorities thereof, each county within the State including its school district, each independent public school district, any municipal corporation within the State and any political division thereof, any individual, firm, association or corporation engaged in any business, except as hereinafter provided, and the receiver or trustee of the same . . . . If the employer is insured, this term shall include his insurer as far as applicable.

"Employee" shall include every person in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is not in the usual course of the trade, business, occupation or profession of the employer and, except as hereinafter provided, minors are included even though working in violation of any child labor law or other similar statute: Provided, that nothing herein contained shall be construed as repealing or altering any such law or statute. Any reference to any employee who has been injured shall, when the employee is dead, include also his legal representatives, dependents and other persons to whom compensation may be payable, pursuant to the provisions of this law . . . .